116-699

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 955.

THE CITY OF WATERVILLE, MARSHALL COUNTY, KANSAS, PLAINTIFF IN ERROR,

vs.

BALTUS VAN SLYKE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED SEPTEMBER 18, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

a *Assignment of Errors.*

Supreme Court of the United States, of October Term, A. D. 1885.

THE CITY OF WATERVILLE, MARSHALL COUNTY, KANSAS, Plaintiff in Error,

vs.

BALTUS VAN SLYKE, Defendant in Error.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said The City of Waterville, Marshall County, Kansas, by E. Stillings, its attorney, and says that in the record and proceedings in the certain action heretofore determined at the November term, A. D. 1884, of the circuit court of the United States for the district of Kansas, on, to wit, March 3d, 1885, in which this defendant in error was plaintiff and this plaintiff in error was defendant, and as attached to writ of error thereon allowed, there is manifest error in this, to wit:

1st. That the said circuit court erred that upon the facts of such controversy as found and stated by the said court upon the
b trial of said action found and determined that the said plaintiff was entitled to recover from said defendant the said sum of $1,282.06 debt, or any part thereof, and costs of suit.

2d. That the said circuit court erred that upon the said conclusions of fact as found and stated by the court upon the said trial the judgment thereof was not given and rendered that said defendant go hence without — and have and recover from said plaintiff its costs of suit in said action.

3d. That the said circuit court erred that upon the facts of such controversy as found and stated by the said court upon the trial of said action the judges thereof divided in opinion upon each and all the five several questions of interest and importance arising upon the conclusions of fact, and each thereof, as found and stated upon the said trial by the said court, and as contained in said record and thereon rendering judgment in favor of said plaintiff, and against said defendant.

And the said The City of Waterville, Marshall County, Kansas, here prays that the said judgment may be reversed, annulled, and
c al*l*together held for naught, and that it may be restored to all things which it has lost by occasion of the said judgment, and the said circuit court ordered and required to reverse its said judgment and on its said conclusions of fact render judgment that said defendant go hence without day, and have and recover its costs of said action against said plaintiff.

E. STILLINGS,
Attorney for Pl'ff in Error.
W. W. GUTHRIE,
Of Counsel.

d [Endorsed:] The City of Waterville, Marshall Co., Kas., p'f in er., *vs.* Baltus Van Slyke, d'f't in er. Assignment of errors. E. Stillings, att'y for pl'ff in er., Leavenworth, Kas. W. W. Guthrie, of counsel, Atchison, Kas.

1 Circuit Court of the United States, District of Kansas. At Law.

BALTUS VAN SLYKE

vs.

THE CITY OF WATERVILLE, Marshall County, Kansas.

To the Hon. the judges of said court:

The defendant was summoned to answer unto the plaintiff in a plea of debt in the sum of $1,200 and damages $500.

And thereupon the plaintiff complains and says that he is a citizen of the State of New York & that the defendant is a corporation organized under & existing by virtue of the laws of the State of Kansas & is a citizen of said State of Kansas, & that the amount in controversy herein exceeds the sum or value of $500 exclusive of costs.

And the plaintiff further avers that heretofore, to wit, on the 1st day of January, 1880, the defendant, to refund its debt pursuant to chap. 50, laws of 1879, made its certain bonds or writings obligatory, numbered from one to twenty, both inclusive, by each of which said bonds the defendant promised to pay to the bearer thereof the sum of $410, with interest at six per cent. per annum, payable semi-annually on the 1st day of January & July in each year, payable at the fiscal agency of the State of Kansas in the city of New York, of which said bonds the plaintiff is, & long before the maturity of the interest thereon was, for full value paid, the lawful owner & holder of Nos. 5, 6, 7, 8, 9, 10, 13, 18, 19, 20, with all the coupons attached thereto, & attached to said bonds were certain so-called coupons or interest warrants which by mistake or clerical error of defendant, its scriveners, printers, lithographers, or engravers were so drawn, printed, & engraved as to read & call for the sum of $22.30 as & for the said semi-annual interest of 6 % on each of said bonds of $410 each.

2 And the plaintiff further avers that in & by the said bonds the defendant covenanted & agreed to pay the interest on said bonds at the rate of 6 % per annum semi-annually, & a copy of bond No. 20 is hereto attached as Exhibit A, the other of said bonds being of the same tenor & effect & in all respects the same, except the date of the maturity thereof.

And the plaintiff now here brings into court the said bonds & coupons, & makes proffer of the same, & brings the coupons into court to be cancelled, if the court so orders.

And the plaintiff further avers that the said bonds were duly registered under the said act, & the certificate of such registration is attached to Exhibit "A."

1. And for cause of action the plaintiff further avers that upon

the covenant in said bond No. 5 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

2nd. For a further and 2nd cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1881.

3 3rd. For a further and 3rd cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

4th. For a further and 4th cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of January, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1882.

5th. For a further and 5th cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto negleted and refused to pay, whereupon an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

6th. For a further and 6th cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of January, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1883.

4 7th. For a further and 7th cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath ac-

crued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

8th. For a further and 8th cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of January, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1884.

9th. For a further and 9th cause of action the plaintiff avers that upon the covenant in said bond No. 5 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

10th. For a further and 10th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

11th. For a further and 11th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1881.

12th. For a further and 12th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said plaintiff the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

13th. For a further and 13th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of January, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1882.

14th. For a further and 14th cause of action the plaintiff avers

that upon the covenant in said bond No. 6 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

6 15th. For a further and 15th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of January, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1883.

16th. For a further and 16th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

17th. For a further and 17th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of January, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1884.

18th. For a further and 18th cause of action the plaintiff avers that upon the covenant in said bond No. 6 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

7 19th. For a further and 19th cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

20th. For a further and 20th cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath

hitherto neglected and refused to pay, wherefore an action hath accrued to the plaintiff to have and recover of said defendant the further sum of $13.30 and interest thereon at 7 per cent. from the first day of January, 1881.

21st. For a further and 21st cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

22nd. For a further and 22nd cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of January, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1882.

8 23d. For a further and 23rd cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

24th. For a further and 24th cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of January, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1883.

25th. For a further and 25th cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

26th. For a further and 26th cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of January, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum

of $12.30 and interest thereon at 7 per cent. from the first day of January, 1884.

9 27th. For a further and 27th cause of action the plaintiff avers that upon the covenant in said bond No. 7 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

28th. For a further and 28th cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

29th. For a further and 29th cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1881.

30th. For a further and 30th cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

10 31st. For a further and 31st cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of January, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1882.

32nd. For a further and 32d cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

33rd. For a further and 33rd cause of action the plaintiff avers

that upon the covenant in said bond No. 8 aforesaid there became due on the first day of January, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1883.

34th. For a further and 34th cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of July, 1883 the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an actiou hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

11 35th. For a further and 35th cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of January, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1884.

36th. For a further and 36th cause of action the plaintiff avers that upon the covenant in said bond No. 8 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

37th. For a further and 37th cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

38th. For a further and 38th cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1881.

12 39th. For a further and 39th cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto,

hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent from the first day of July, 1881.

40th. For a further and 40th cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of January, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

41st. For a further and 41st cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of July, 1882 the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

42nd. For a further and 42nd cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of Jan'y, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1883.

13 43rd. For a further and 43rd cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

44th. For a further and 44th cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of Jan'y, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1884.

45th. For a further and 45th cause of action the plaintiff avers that upon the covenant in said bond No. 9 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum

of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

46th. For a further and 46th cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

14 47th. For a further and 47th cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1881.

48th. For a further and 48th cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

49th. For a further and 49th cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of January, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1882.

50th. For a further and 50th cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

15 51st. For a further and 51st cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of Jan'y, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1883.

52nd. For a further and 52nd cause of action the plaintiff avers

that upon the covenant in said bond No. 10 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

53rd. For a further and 53rd cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of Jan'y, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1884.

54th. For a further and 54th cause of action the plaintiff avers that upon the covenant in said bond No. 10 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

16 55th. For a further and 55th cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

56th. For a further and 56th cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of Jan'y, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1881.

57th. For a further and 57th cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

58th. For a further and 58th cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of Jan'y, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto

neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1881.

17 59th. For a further and 59th cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

60th. For a further and 60th cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of Jan'y, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1883.

61st. For a further and 61st cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent from the first day of July, 1883.

62nd. For a further and 62nd cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of Jan'y, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1884.

18 63d. For a further and 63rd cause of action the plaintiff avers that upon the covenant in said bond No. 13 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

64th. For a further and 64th cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum

of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

65th. For a further and 65th cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of January, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1881.

66th. For a further and 66th cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

19 67th. For a further and 67th cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of Jan'y, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1882.

68th. For a further and 68 cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

69th. For a further and 69th cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of Jan'y, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1883.

70th. For a further and 70th cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

20 71st. For a further and 71st cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid

there became due on the 1st day of January, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1884.

72nd. For a further and 72nd cause of action the plaintiff avers that upon the covenant in said bond No. 18 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

73rd. For a further and 73rd cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

74th. For a further and 74th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of Jan'y, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1881.

21 75th. For a further and 75th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

76th. For a further and 76th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of Jan'y, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1882.

77th. For a further and 77th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to

this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

78th. For a further and 78th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of Jan'y, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1883.

22 79th. For a further and 79th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

80th. For a further and 80th cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of Jan'y, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1884.

81st. For a further and 81st cause of action the plaintiff avers that upon the covenant in said bond No. 19 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

82d. For a further and 82d cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of July, 1880, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1880.

23 83rd. For a further and 83rd cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of Jan'y, 1881, the sum of $13.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent from the first day of January, 1881.

84th. For a further and 84th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of July, 1881, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1881.

85th. For a further and 85th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of Jan'y, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of Jan'y, 1882.

86th. For a further and 86th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of July, 1882, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1882.

24 87. For a further and 87th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of January, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1883.

88th. For a further and 88th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of July, 1883, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1883.

89. For a further and 89th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of January, 1884, the sum of $12.30, which said sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of January, 1884.

90th. For a further and 90th cause of action the plaintiff avers that upon the covenant in said bond No. 20 aforesaid there became due on the first day of July, 1884, the sum of $12.30, which said

sum the defendant, though often requested thereunto, hath hitherto neglected and refused to pay, wherefore an action hath accrued to this plaintiff to have and recover of said defendant the further sum of $12.30 and interest thereon at 7 per cent. from the first day of July, 1884.

25 EXHIBIT "A."

THE STATE OF KANSAS.

$410. *City of Waterville, Marshall County.* No. 20.

Know all men by these presents that the city of Waterville, in the county of Marshall, in the State of Kansas, is, for value received, indebted to Grove P. Jenks, or bearer, in the sum of four hundred and ten dollars, to be paid on the first day of January, A. D. 1899, with interest thereon at the rate of six per cent. per annum, payable semi-annually on the presentation of the coupons hereto attached as they severally become due; principal & interest payable at the fiscal agency of the State of Kansas, in the city of New York, after January 1st, A. D. 1881.

This bond is issued for the purpose of refunding outstanding water power improvement bonds in pursuance of an act of the Legislature of the State of Kansas entitled "An act to enable counties, municipal corporations, the boards of education of any city and school district to refund their indebtedness," taking effect March 10th, A. D. 1879, and in accordance with ordinance No. 66 of the said city of Waterville, published in the Blue Valley Telegraph December 12th, A. D. 1879.

In witness whereof the council of the said city of Waterville have caused this bond to be issued and to be signed by the mayor and attested by the clerk of said city under the seal thereof, this first day of January, A. D. 1880, and recorded according to the provisions of section 4 of said act.

[L. S.] J. P. BURTIS, *Mayor.*
Attest: W. P. MUDGETT,
City Clerk.

UNITED STATES OF AMERICA:

26 This is to certify that this bond was registered in my office according to law this 24th day of Dec., 1879.

[SEAL.] G. M. LEWIS,
County Clerk of Marshall County, Kansas.

Wherefore the plaintiff prays judgment for the said several sums and the interest thereon as aforesaid and costs.

S. E. BROWN,
Pl'ff's Att'y.

Endorsed: No. 4741. District of Kansas, in U. S. circuit court. Baltus Van Slyke *vs.* The City of Waterville. Declaration. Filed July 21, 1884. A. S. Thomas, clerk. S. E. Brown, plt'ff's att'y.

27 In the Circuit Court of the United States for the District of Kansas.

BALTUS VAN SLYKE *vs.* THE CITY OF WATERVILLE.

I enter myself security for costs in said case, and promise to pay all costs which may accrue to the opposite part- in this action, or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjusted to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated 16 day of June, 1884.

S. E. BROWN.

Endorsed: No. 4741. Filed July 21, 1884. A. S. Thomas, clerk.

28 DISTRICT OF KANSAS, *ss:*

Circuit Court of the United States of America.

The United States ot America to the marshal of the district of Kansas, Greeting:

You are hereby commanded to notify the City of Waterville, Marshall county, Kansas, that it has been sued by Baltus Van Slyke in the circuit court of the United States for the district of Kansas, and that unless it answer by the 20th day of August, A. D. 1884, the petition of the said Baltus Van Slyke against it filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the 31st day of July, A. D. 1884.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 21st day of July, A. D. 1884.

[SEAL.] A. S. THOMAS, *Clerk.*

28½ Suit brought for the recovery of money. Amount claimed, $1,200 debt & $500 damages.

S. E. BROWN,
Attorney for Plaintiff.
A. S. THOMAS, *Clerk.*

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ July the 21st, 1884, served the same at the county of Marshall, State and district of Kansas, on the 25th day of July, 1884, by delivering to Charles F. Scanton, mayor of the within-named defendant, The City of Waterville, in Marshall county, State of Kansas, a true and certified copy of this writ, with all the endorsements thereon.

B. F. SIMPSON,
U. S. Marshal.

Fees, $11.00.

[Endorsed:] No. 4741. Circuit court of the United States, district of Kansas. Baltus Van Slyke *vs.* The City of Waterville. Summons. Issued July 21, 1884. Returnable July 31, 1884. Filed July 30, 1884. A. S. Thomas, clerk. S. E. Brown, attorney for plaintiff.

29 EXHIBIT "A."

UNITED STATES OF AMERICA.

State of Kansas, City of Waterville.

No. 2. $500.

Water Power Improvement Bond.

$500. $500.

Know all men by these presents that the City of Waterville, in the State of Kansas, promises to pay, ten years after the date hereof, to the bearer, at the banking house of Brown, Wadsworth & Co., New York, the sum of five $500 hundred dollars for value received. This bond shall bear interest at the rate of eight per cent. per annum from date, payable semi-annually on the first days of May and November of each year upon the presentation of the proper coupon hereto attached at the banking house of Brown, Wadsworth & Co., New York city.

This bond is issued in pursuance of an order issued by the city of Waterville, Marshall county, Kansas, July 24th, A. D. 1872, ordering an election to be held on the 26th day of August, A. D. 1872, to vote upon a proposition to issue bonds to the amount of ten thousand dollars for the purchase and improvement of a water power on the Little Blue river, and an election duly held in said city on the 26th day of August, A. D. 1872, in compliance with the law.

In testimony whereof the mayor has signed and the clerk attested these presents, and affixed the corporate seal of said city of Waterville, this first day of November, A. D. 1872.

[SEAL.] JAMES P. BURTIS, *Mayor.*

Attest: ROBT. CAMPBELL, *Clerk.*

(Here follows the coupon.)

Registered in the office of the county clerk of Marshall county, State of Kansas, Nov. 19th, A. D. 1872.

[SEAL.] JAMES SMITH,
Co. Clerk.

30 *Answer.*

In the Circuit Court of the United States for the District of Kansas

BALTUS VAN SLYKE, Plaintiff,

vs.

THE CITY OF WATERVILLE, MARSHALL COUNTY, Defendant.

Now comes the said named defendant, and for answer to plaintiff's petition herein filed says:

First. That defendant admits that plaintiff is a citizen of the State of New York, and that defendant is a corporation organized under

and existing by virtue of the laws of the State of Kansas, and a citizen of said State of Kansas, and denies the truth of each and every other averment, statement, and allegation in said petition contained.

Second. For further answer herein defendant denies that it ever executed, or authorized the execution of, any of the said described bonds or writings obligatory, or the claimed coupons thereto attached, or any of the claimed certain bonds claimed to have been refunded into the said bonds or writings obligatory; and denies that defendant was ever indebted at any time or to any extent as in said petition set up and described; and further denies that defendant ever executed any bonds or writings obligatory which were or are refunded into the said described bonds or writings obligatory in said petition described; and denies that defendant ever promised to pay or was ever bound for the payment of any of said described sums, or claimed bonds or writings obligatory at any time, in any form or in any manner; and further denies that the said described bonds were duly registered under the said claimed act, and the certificate of such registration attached thereto, and says that, if ever so done, same was without authority or consent of defendant.

Third. For further answer defendant says that without prejudice to former defences hereinabove set out defendant admits that
31 in fact, on January 1st, A. D. 1880, one J. P. Burtis, then in fact mayor of defendant as such city, and one W. P. Mudgett, then city clerk of defendant as such city, did, claiming then to be thereto authorized, but without in fact or in law having any authority therefor, or legal power so to do, *did* sign twenty certain claimed bonds, and thereto attached the seal of defendant as such city, and that No. 20 thereof is copied in plaintiff's petition, except the date of claimed payment as therein inserted should be "the first day of January, A. D. 1900," and that there appeared thereon as a part thereof, plainly printed, the words "funding bond;" and says that there was thereto attached as a part thereof, and likewise attached to each of said other claimed nineteen bonds, forty certain claimed coupons, numbered consectutively from one to forty, and being alike except that the numbers were in consecutive order and each thereof contained the provision for claimed payment each one year later, No. 1 thereof being copied as follows, to wit:

$22.30. The City of Waterville will pay to the bearer the sum of twenty-two dollars and thirty cents on the first day of July, 1880, at the fiscal agency of the State of Kansas, in the city of New York, being interest then due on bond No. 21, issued January 1st, 1880.

J. P. BURTIS, *Mayor.*

Attest: W. P. MUDGETT, *Clerk.*

And that such acts were so done by said named officials only under the pretended authority of chapter 50 of the Laws of Kansas, A. D. 1879, for the purpose of refunding to the said Grove P. Jenks, then the holder and claimed owner of $8,200.00 in claimed amount of "water power improvement bonds," then claimed to have been

therefor issued on November 1st, A. D. 1872, by the defendant, under the signatures of James P. Burtis, mayor, and Rob't Campbell, clerk, with the seal of said city attached, and with claimed coupons thereto attached providing for semi-annual interest thereon, num-
32 bered from one to twenty, consecutively, for the claimed sum of $20.00 each; and a copy of No. 2 of which said claimed bonds, the others being of like amounts and rates, and differing only in numbers, is hereto attached and made part hereof, except as to the said claimed coupons, as Exhibit "A," and which said bonds and each thereof defendant avers were so signed and the said seal thereto attached without authority therefor, or legal power so to do, for or on account of purpose as hereinafter stated, and so done only under and by virtue of the resolution of the city council of defendant for such purpose theretofore without legal power or authority so to do, on July 22nd, A. D. 1872, passed, and of which the following is a true and correct copy, to wit:

Resolution.

It is hereby ordered by the mayor and council of the city of Waterville that a special election be called for the 26th day of August, A. D. 1872, in the city of Waterville, to vote upon a proposition to issue bonds to the amount of ten thousand dollars for the purchase of the Samuel Shroyer farm on the Little Blue, and for the erection of a dam across the Little Blue at a point upon the same for the purpose of establishing water-works, and for manufacturing, milling, and other purposes.

ROBERT CAMPBELL,
City Clerk.

And defendant admits that at the election in said city, held in pursuance of notice therefor on August 26th, A. D. 1872, for the approval or rejection of the same, that the majority of the votes cast at such election were cast in favor of the approval of such resolution, and that the claimed authority for which then and since only existed by virtue of chapter 208 of the Laws of Kansas, 1872, entitled "An act authorizing cities to construct water-works;" and defend-
33 ant avers that at said time and ever thereafter the defendant was a city of the third class, organized and existing under authority of the laws of Kansas, and not having and possessing any powers other than as thereby expressly authorized, and then having no funds provided therefor or authorized to be issued for the purchase of the Samuel Shroyer farm on the Little Blue, and for the erection of a dam across the Little Blue at a point upon the same, for the said claimed purpose or otherwise, and without any way or means in and by which to provide for such purpose and improvements unless by issuing bonds or loaning the credit of defendant, and thereon to provide and pay therefor by taxation upon the property in said city; and that at said time and ever since the said Little Blue was a river fully a mile and a half distant from the city limits of defendant as such city, and that the said Samuel Shroyer farm was then and since a tract of land of about 160 acres on both sides

of said Little Blue river, and fully the distance of one mile both sides of said Little Blue river, and fully the distance of one mile and a half from the limits of defendant as such city, and as such neither said farm nor said river with the erection of a dam across the same at any point thereon could be made available or utilized for the purpose of water-works for the purpose of supplying the inhabitants of such city with water for domestic use or the extinguishment of fires, but that on the contrary such farm and said river, with a dam across the same on said farm, was not available or possible to be used for other than manufacturing purpos s not of a public character, but only for projects in aid of ind - vidual interests and personal purposes of profit and gain, and all which were then and ever since have been matters of public notoriety at said city of Waterville and whereever the same was known, and of which the public, and particularly all persons having any connection or association with said city or any of its affairs, or in any way connected therewith, were bound to take no-
34 tice of and be informed thereof; and that, in fact, at said time the said Samuel Shroyer farm was purchased, and a dam constructed across the same at a point on said farm without authority or legal power therefor, and for the well-known and publically recognized purpose of providing for and causing the same to be used in aid of the erection thereon of a flouring mill, with water-power contributed thereby, and also other manufacturing purposes not of a public character, but in aid of private enterprises to the aid of individual interests and personal purposes and profit and gain of such individual interests as owners thereof, and beyond and entirely disconnected with defendant as such city, and beyond the power of defendant as such city, or otherwise, to control, use, or profit therefrom; and all which all persons were bound to take notice of from the said recitals upon the face of said claimed bonds of date November 1st, 1872, and that all persons were bound to take notice of and to know from the recitals on the face thereof that the said claimed bonds of date January 1st, A. D. 1880, were so signed and sealed for the refunding of the said claimed prior issue of bonds, and that the same had been so done without authority or legal power so to do as the act of defendant, or by its authority, or upon its responsibility, for which in no way the defendant might or could be bound, and as not within the authority or power attempted to be conferred and authorized under and by virtue of said chapter 50 of said laws of Kansas, 1879, and so bound to take notice, and to know that such claimed bonds of date November 1st, A. D. 1872, were not matured or maturing indebtedness of defendant as such city within the authority of said chapter 50, and all which want of authority and power defendant avers then at said several times in fact and in law existed, and that each and both such claimed issues of bonds were at the several dates thereof and ever since without any authority or power as the act of this defendant, and as such claimed issues and bonds then and ever since null and void as in any way binding the defendant therefor.

35 Wherefore defendant prays judgment, and that it go hence without day, and have and recover from plaintiff its proper costs of suits.

W. W. GUTHRIE,
Defendant's Attorney.

THE STATE OF KANSAS, } ss:
Atchison County, }

W. W. Guthrie, being duly sworn upon oath, states that he is attorney for defendant in the above-entitled action hereto duly authorized, and that he knows the contents of the foregoing answer by him signed as such attorney, and that the second defence thereof as therein stated is true, as affiant verily believes.

W. W. GUTHRIE.

Subscribed in my presence and sworn to before me this 16th day of August, A. D. 1884.

[SEAL.] A. F. GROVES,
Notary Public.

Commission expires March 12, 1887.

Endorsed: No. 4741. Baltus Van Slyke *vs.* The City of Waterville. Marshall county, Kansas. Answer. Filed Aug. 18, 1884. A. S. Thomas, clerk. W. W. Guthrie, att'y for def't.

36 In the Circuit Court of Tnited States, District of Kansas.

BALTUS VAN SLYKE
vs. } No. 4741.
THE CITY OF WATERVILLE.

Now comes the plaintiff &, for reply to the answer of the defendant herein, denies each & every allegation therein set forth, & prays as heretofore.

S. E. BROWN,
Pl't'ff's Att'y.

[Endorsed:] No. 4741. U. S. C. C. K's. B. Van Slyke *vs.* The City of Waterville. Reply. Filed Aug. 25, 1884. A. S. Thomas, clerk. S. E. Brown, pl't'ff's att'y.

37 *Stipulation Waiving a Jury.*

In the Circuit Court of the United States for the District of Kansas.

B. VAN SLYKE
vs. } No. 4741.
THE CITY OF WATERVILLE.

The parties to this action hereby waive the intervention of a jury, and agree that this action may be tried by the court.

S. E. BROWN,
Attorney for Plaintiff.
W. W. GUTHRIE,
Attorney for Defendant.

38 In the Circuit Court of the United States for the District of Kansas.

BALTUS VAN SLYKE, Plaintiff,
vs.
THE CITY OF WATERVILLE, MARSALL COUNTY, Defendant. } No. 4741.

This action having been *tried* to the court, a jury being waived, and the evidence having been heard, and the case taken under advisement at the regular November term, A. D. 1884, the court does, upon consideration thereof, and as authorized by the laws of the State of Kansas in such cases, now find and state as conclusions of fact thereon as follows:

Conclusions of Fact.

No. one. The subject-matter of this action is for interest for years 1880, 1881, 1882, 1883, and first half of 1884 on ten certain bonds of a series of twenty bonds, as issued by the city of Waterville on January 1st, A. D. 1880, and registered, a copy of one of which bonds, all others being like (differing only in numbers), is as follows:

Funding Bond.

STATE OF KANSAS.

$410. *City of Waterville, Marshall County.* No. 20.

Know all men by these presents that the City of Waterville, county of Marshall, in the State of Kansas, is, for value received, indebted to Grove P. Jenks, or bearer, in the sum of four hundred and ten dollars, to be paid on the first day of January, A. D. 1900, with interest thereon at the rate of six per cent. per annum, payable semi-annually, on the presentation of the coupons hereto attached as they severally become due; principal and interest payable at the fiscal agency of the State of Kansas, in the city of New York, after January first, A. D. 1881.

This bond is issued for the purpose of refunding outstanding water-power improvement bonds, in pursuance of an act of
39 the Legislature of the State of Kansas entitled "An act to enable counties, municipal corporations, the boards of education of any city and school district to refund their indebtedness," taking effect March 10th, A. D. 1879, and in accordance with ordinance No. 66 of the said city of Waterville, published in the Blue Valley Telegraph, December 12th, A. D. 1879.

In witness whereof the council of the said City of Waterville have caused this bond to be issued and to be signed by the mayor and attested by the clerk of said city under the seal thereof this first day of January, A. D. 1880, and recorded according to the provisions of section 4 of said act.

[SEAL.] J. P. BURTIS, *Mayor.*

Attest:

[SEAL.] M. P. MUDGETT,
City Clerk.

UNITED STATES OF AMERICA:

And to each of which said bonds was attached a series of forty coupons, a copy of one of which, all others being alike, differing only in numbers is as follows:

$22.30. The City of Waterville will pay to the bearer the sum of twenty-two dollars and thirty cents on the 1st day of Jan., 1881, at the fiscal agency of the State of Kansas, in the city of New York, being interest then due on bond No. 20, issued January 1st, 1880.

J. P. BURTIS, *Mayor.*
Attest: M. P. MUDGETT, *Clerk.*

And as issued by said City of Waterville of date of same.

It was conceded upon the trial that said City of Waterville was at said time and since a city of the third class under the laws of the State of Kansas, and that said J. P. Burtis and W. P. Mudgett were, respectively, mayor and city clerk of said city at said time, and that the signatures and seals to said bonds were genuine.

No. two. Said bonds were in fact so issued under chapter fifty of the laws of the State of Kansas, 1879, and in lieu of certain bonds
40 as issued by said city on November 1st, 1872, as hereinafter described, at said time, amounting upon their face, with accrued interest, to about sixteen thousand dollars, and for sixty per cent. thereof.

No. three. Said described bonds were so issued under said chapter fifty, which took effect March 10th, 1879, and which expressed that every city of the first, second, or third class was thereby authorized and empowered to compromise and refund its matured and maturing indebtedness of every kind and description whatsoever upon such terms as could be agreed upon, and to issue new bonds, with semi-annual interest coupons attached, in payment for any sum so compromised, at a rate of interest not exceeding six per cent. per annum, and to be signed by the mayor and clerk of said city, with the seal thereof attached.

No. four. Such ordinance number sixty-six purported to have been passed December 4th, 1879, and published December 12th, 1879, and at which several times and until after January 1st, 1880, the administration of the affairs of said city was confined to a mayor and five councilmen; and during such time, by the removal from such city of two of such councilmen, there were but three of such councilmen, and one of whom was sick and unable to act, and no meeting of such council was held for the consideration of such matter, and no such ordinance was to be found in the records of such city, and ordinance number sixty-six thereof as found in such records was for the prevention of persons climbing upon railroad cars.

No. five. At no time did any authority exist for the construction of water-power improvement or the issue of bonds therefor other than under chapter two hundred and sixty-eight of the laws of Kansas, 1872, entitled "An act authorizing cities to construct waterworks," and expressing such authority as follows, viz: That
41 cities of the first, second, and third classes of the State of Kansas are hereby granted full power and authority on be-

half of such cities respectively to contract for and procure water-works, to be constructed for the purpose of supplying the inhabitants of such cities with water for domestic use, the extinguishment of fires, and for manufacturing and other purposes, and that the city council of such cities should have power and authority to dam any river not navigable and to condemn in the name of and appropriate for the use of the city any such land or lands located in or out of the corporate limits thereof as might be necessary for the construction and operation of such water-works, and therefor to issue the bonds of the city.

No. six. The said bonds which said issue of 1880 was issued to so refund was an issue of eight thousand five hundred dollars of bonds of date November 1st, 1872, and registered, a copy of which (all others being like, differing only in numbers) is as follows:

(See next page.)

No. 2. *Water-Power Improvement Bond.* $500.

$500. $500.

UNITED STATES OF AMERICA,

State of Kansas, City of Waterville:

Know all men by these presents that the City of Waterville, in the State of Kansas, promises to pay, ten years after the date hereof, to the bearer, at the banking house of Brown, Wadsworth & Co., New York, the sum of five hundred dollars **($500)**, for value received. This bond shall bear interest at the rate of eight per cent. per annum from date, payable semi-annually on the first days of May and November of each year, upon the presentation of the proper coupon hereto attached at the banking-house of Brown, Wadsworth & Co., New York city.

This bond is issued in pursuance of an order issued by the
42 City of Waterville, Marshall county, Kansas, July 24, A. D. 1872, ordering an election to be held on the 26th day of August, A. D. 1872, to vote upon a proposition to issue bonds to the amount of ten thousand dollars, for the purchase and improvement of a water-power on the Little Blue river, and an election duly held in said city on the 26th day of August, A. D. 1872, in compliance with the law.

In testimony whereof the mayor has signed and the clerk attested these presents and affixed the corporate seal of said City of Waterville, this first day of November, A. D. 1872.

[SEAL.] JAMES P. BURTIS, *Mayor.*

Paid.

Attest:

ROBERT CAMPBELL, *Clerk.*

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued, that the signatures thereto are genuine, and that such bond has been duly regis-

tered in my office in accordance with an act of the Legislature entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

Witness my hand and official seal this 2nd day of June, 1873.

[SEAL.] D. W. WILDER,
Auditor of State.

With coupons thereto attached evidencing interest, as by such bonds provided; and it was conceded on the trial that such bonds were in fact signed and issued by James P. Burtis and Rob't Campbell, then respectively mayor and city clerk of said city, with seal thereof attached.

No. Seven. During all of such time all of the acts of such city were required by law to be authorized by ordinance thereof passed at a meeting of the city council, at which a majority thereof should be present, and to be approved by the mayor and recorded by the clerk; but no ordinance was passed for the issuing of such bonds, and same was not authorized or provided for otherwise than by resolution, copied as follows:

"*Resolution.*

43 "It is hereby ordered by the mayor and council of the city of Waterville that a special election be called for the 26th day of August, A. D. 1872, in the city of Waterville, to vote upon a proposition to issue bonds to the amount of ten thousand dollars for the purchase of the Samuel Shroyer farm on the Little Blue and for the erection of a dam across the Little Blue at a point upon the same, for the purpose of establishing water-works, and for manufacturing, milling, and other purposes.

"ROBERT CAMPBELL,
"*City Clerk.*"

But it was conceded that such election was in fact held and a majority vote of such city cast in favor of such proposition.

No. eight. At the time such resolution was passed and bonds issued as therein expressed said city of Waterville was within the territory of eighty acres of land, with a population of not exceeding four hundred persons, and one mile and a quarter distant from the Little Blue river, and with three-quarters of a mile of territory intervening between said city limits and the said Samuel Shroyer farm, and on which said Little Blue river then was, and which said intervening territory was the private property of individuals outside of said city, and without any public highway over said private property, and said city being on ground at an elevation of fully seventy feet above said Little Blue river, and which said condition has since continued, except that in 1878 the territory of said city was enlarged

to one hundred and twenty acres, and at times said city has had a population of not exceeding six hundred persons.

No. nine. Such bonds of 1872 were in fact issued and used in the purchase of the said Samuel Shroyer farm, on the Little Blue, and in erecting a dam across the Little Blue thereon, and thereby making a water power for manufacturing purposes, which was then
44 donated to encourage the building at that point, viz., on said river on said farm of a merchant flouring mill by private parties as owners thereof, and said city has therefrom derived only such benefits as were incident to the building and operating of such flouring mill. At said time Samuel Shroyer, owner of such farm, had executed to the said city of Waterville a bond for a deed upon the payment of two thousand dollars purchase-price, no part of which was paid until after the issuing of such bonds, and said water power then and ever since was available only for private manufacturing purposes and only for such purposes used.

No. 10. The plaintiff is the holder of the said bonds and coupons for value and without other notice than such as could be imported from the public character thereof, of which all persons would be bound to take notice.

No. 11. The amount of interest as expressed in said bonds as due now amounts to $1,282.06 *dollars.*

Each of the foregoing findings was made upon evidence introduced by the parties respectively against the objection, and subject to the exception of the adverse parties respectively.

Upon such conclusions of fact, as found and stated, the court, being divided in opinion thereon, does find that the plaintiff is entitled to recover against the defendant the said sum of 1,282.06 dollars, defendant duly excepting thereto.

DAVID J. BREWER,
Circuit Judge.

[Endorsed:] No. 4741. Baltus Van Slyke *vs.* City of Waterville. Conclusions of fact and of law. Filed March 3, 1885. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

45 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 24th day of November, 1884, proceedings were had and appear of record in words and figures following, to wit:

BALTUS VAN SLYKE, Plaintiff,
vs.
THE CITY OF WATERVILLE, MARSHALL COUNTY, KANSAS, Defendant. } 4741.

MONDAY, *March* 2, 1885.

Now, in this action, heretofore at this term tried and taken under advisement by the court, now comes the plaintiff by att'ys, W. H.

Rossington and F. M. Clark, and defendant by its attorney, W. W. Guthrie, and the court being fully advised, finds and states as its conclusions of facts and of law in this action, as follows:

In the Circuit Court of the United States for the District of Kansas.

BALTUS VAN SLYKE, Plaintiff,
vs.
THE CITY OF WATERVILLE, MARSHALL COUNTY, KANSAS, Defendant. } No. 4741.

This action having been tried to the court, a jury being waived, and the evidence having been heard and the case taken under advisement at the regular November term, A. D. 1884, the court does, upon consideration thereof and as authorized by the laws of the State of Kansas in such cases, now finds and states as conclusions of fact thereon as follows:

Conclusions of fact No. 1. The subject-matter of this action is for interest for years 1880, 1881, 1882, 1883, and first half of 1884 on ten certain bonds of a series of twenty bonds as issued by the city of Waterville on January 1st, A. D. 1880, and registered, a copy of one of which bonds, all others being alike, differing only in numbers, is as follows:

THE STATE OF KANSAS.

$410.00. *City of Waterville, Marshall County.* No. 20.

Know all men by these presents that the City of Waterville,
46 in the county of Marshall, in the State of Kansas, is for value received indebted to Grove P. Jenks, or bearer, in the sum of four hundred and ten dollars, to be paid on the first day of January, A. D. 1900, with interest thereon at the rate of six per cent. per annum, payable semi-annually, on the presentation of the coupons hereto attached as they severally become due; principal and interest payable at the fiscal agency of the State of Kansas, in the city of New York, after January first, A. D. 1881. This bond is issued for the purpose of refunding outstanding water-power improvement bonds in pursuance of an act of the Legislature of the State of Kansas entitled "An act to enable counties, municipal corporations, the boards of education of any city and school district to refund their indebtedness," taking effect March 10th, A. D. 1879, and in accordance with ordinance No. 66 of the said city of Waterville published in the Blue Valley Telegraph December 12, A. D. 1879.

In witness whereof the council of the said city of Waterville have caused this bond to be issued and to be signed by the mayor and attested by the clerk of said city, under the seal thereof, this first day of January, A. D. 1880, and recorded according to the provisions of section 4 of said act.

[SEAL.] J. P. BURTIS, *Mayor.*

Attest: W. P. MUDGETT, *City Clerk.*

And to each of which said bonds was attached a series of forty coupons, a copy of one of which (all others being like, differing only in number) is as follows:

$22.30. The City of Waterville will pay to bearer the sum of twenty-two dollars and thirty cents on the first day of Jan., 1881, at the fiscal agency of the State of Kansas, in the city of New York, being interest then due on bond No. 21, issued January 1st, 1880.

J. P. BURTIS, *Mayor.*

Attest: W. P. MUDGETT, *Clerk.*

And as issued by said city of Waterville of date of same.

It was conceded upon the trial that the said city of Waterville was at said time and since a city of the third class
47 under the laws of the State of Kansas, and that said J. P. Burtis and W. P. Mudgett were respectively mayor and city clerk of said city at said time, and that the signatures and seals to said bonds were genuine. No. two. Said bonds were, in fact, so issued under chapter fifty of the Laws of the State of Kansas, 1879, and in lieu of certain bonds as issued by said city on November 1st, 1872, as hereinafter described, at said time amounting, upon their face, with accrued interest, to about sixteen thousand dollars, and for sixty per cent. thereof. No. three. Said described bonds were so issued under said chapter fifty, which took effect March 10th, 1879, and which expressed that every city of the first, second, or third class was thereby authorized and empowered to compromise and refund its matured and maturing indebtedness, of every kind and description whatsoever, upon such terms as could be agreed upon, and to issue new bonds, with semi-annual interest coupons attached, in payment for any sum so compromised, at a rate of interest not exceeding six per cent. per annum, and to be signed by the mayor and clerk of said city, with the seal thereof attached. No. four. Such ordinance number sixty-six, purported to have been passed December 4th, 1879, and published Dec. 12, 1879, and at which several times, and until after January 1st, 1880, the administration of the affairs of said city was confined to a mayor and five councilmen, and during such time, by the removal from such city of two of such councilmen, there were but three of such councilmen, and one of whom was sick and unable to act, and no meeting of such council was held for the consideration of such matters, and no such ordinance was to be found in the records of such city, and ordinance number sixty-six thereof, as found in such records, was for the prevention of persons climbing upon railroad cars. No. five. At no time did any authority exist for the construction of water power
48 improvement, or the issue of bonds therefor, other than under chapter two hundred and sixty-eight of the Laws of Kansas, 1872, entitled "An act authorizing cities to construct water-works," and expressing such authority as follows, viz: That cities of the first, second, and third classes of the State of Kansas are hereby granted full power and authority on behalf of such cities respectively to contract for and procure water-works to be

constructed for the purpose of supplying the inhabitants of such cities with water for domestic use, the extinguishment of fires, and for manufacturing, and other purposes; and that the city council of such cities should have power and authority to dam any river not navigable, and to condemn in the name of and appropriate for the use of the city any such land or lands located in or out of the corporate limits thereof as might be necessary for the construction and operation of such water-works, and therefor to issue the bonds of the city. No. six. The said bonds which said issue of 1880 was issued to so refund was an issue of eight thousand five hundred dollars of bonds of date November 1st, 1872, and registered, a copy of which, all others being like, differing only in numbers, is as follows:

$500.00. No. 2. $500.00.

UNITED STATES OF AMERICA.

State of Kansas, City of Waterville, in the State of Kansas.

$500. *Water Power Improvement Bond.* $500.

Know all men by these presents that the City of Waterville, in the State of Kansas, promises to pay, ten years after the date hereof, to the bearer, at the banking house of Brown, Wadsworth & Co., New York, the sum of five hundred dollars for value received. This bond shall bear interest at the rate of eight per cent. per annum from date, payable semi-annually on the first days of May and November of each year upon the presentation of the proper coupon hereto attached at the banking house of Brown, Wadsworth & Co., New York city. This bond is issued in pursuance of an order issued by the City of Waterville, Marshall County, Kan-
49 sas, July 24, A. D. 1872, ordering an election to be held on the 26th day of August, A. D. 1872, to vote upon a proposition to issue bonds to the amount of ten thousand dollars for the purchase and improvement of the water power on the Little Blue river, and an election duly held in said city on the 26th day of August, A. D. 1872, in compliance with the law.

In testimony whereof the mayor has signed and the clerk attested these presents, and affixed the corporate seal of said city of Waterville, this first day of November, A. D. 1872.

[SEAL.] JAMES P. BURTIS, *Mayor.*

Attest: ROB'T CAMPBELL, *Clerk.*

I, D. W. Wilder, auditor of the State of Kansas, do hereby certify that this bond has been regularly and legally issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose [of] building bridges, aiding in the construction of railroads or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 3, 1872.

Witness my hand and official seal this 2nd day of June, 1873.

D. W. WILDER,
Auditor of State.

With coupons thereto attached, evidencing interest as by such bonds provided; and it was conceded on the trial that such bonds were in fact signed and issued by James P. Burtis and Rob't T. Campbell, then respectively mayor and city clerk of said city, with seal thereof attached. No. seven. During all of such time all of the acts of such city were required by law to be authorized by ordinance thereof passed at a meeting of the city council, at which a majority thereof should be present, and to be approved by the mayor and recorded by the clerk; but no ordinance was passed for the issuing of such bonds, and the same was not authorized or provided for otherwise than by resolution, copied as follows:

"*Resolution.*

"It is hereby ordered by the mayor and council of the city of Waterville that a special election be called for the 26th day of August, A. D. 1872, in the city of Waterville, to vote upon a proposition to issue bonds to the amount of ten thousand dollars for the purchase of the Samuel Shroyer farm, on the Little Blue, and for the erection of a dam across the Little Blue at a point upon the same for the purpose of establishing water-works and for manufacturing, milling, and other purposes.

"ROBERT CAMPBELL,
"*City Clerk.*"

But it was conceded that such election was in fact held, and a majority vote of such city cast in favor of such proposition. No. eight. At the time such resolution was passed, and bonds issued as therein expressed, said city of Waterville was within the territory of eighty acres of land, with a population of not exceeding four hundred persons, and one mile and a quarter distant from the Little Blue river, and with three-quarters of a mile of territory intervening between said city limits and the said Samuel Shroyer farm, and on which said Little Blue river then was, and which said intervening territory was the private property of individuals outside of said city, and without any public highway over said private property, and said city being on ground at an elevation of fully seventy feet above said Little Blue river, and which said condition has since continued, except that in 1878 the territory of said city was enlarged to one hundred and twenty acres, and at times said city has had a population of not exceeding six hundred persons. No. 9. Such bonds of 1872 were in fact issued and used in the purchase of the said Samuel Shroyer farm, on the Little Blue, and in erecting a dam across the Little Blue thereon, and thereby making a water power for manufacturing purposes, which was then donated to encourage the building at that point, viz., on said river

on said farm of a merchant flouring mill by private parties,
51 as owners thereof, and said city has therefrom derived only such benefits as were incident to the building and operating of such flouring mill. At said time Samuel Shroyer, owner of such farm, had executed to the said city of Waterville a bond for a deed, upon the payment of two thousand dollars purchase price, no part of which was paid until after the issuing of such bonds; and said water power then and ever since was available only for private manufacturing purposes, and only for such purposes used (see below). No. 10. The plaintiff is the holder of the said bonds and coupons for value, and without other notice than such as would be imparted from the public character thereof, of which all persons would be bound to take notice. The amount of interest, as expressed in said bonds as due, now amounts to one thousand two hundred eighty-two & $\frac{6}{100}$ dollars. Each of the foregoing findings was made upon evidence introduced by the parties respectively against the objection, and subject to the exception of the adverse parties respectively. Upon such conclusions of fact as found and stated, the court, being divided, in opinion thereon, does find that the plaintiff is entitled to recover against the defendant the said sum of one thousand two hundred eighty-two & $\frac{6}{100}$ dollars, defendant duly excepting thereto.

DAVID J. BREWER,
Circuit Judge.

Endorsed: No. 4741. Filed March 3, 1885. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

And to each and all said conclusions of fact each party at the time duly excepted to each and all evidence introduced by the adverse party upon the said trial, and thereupon the said conclusions of law were made by the court upon a division in opinion of the judges thereof, and defendant duly excepting to such conclusions, and now here forthwith comes said defendant and files its certain motion for new trial
as on file, which, being duly considered by the court, is upon
52 like division overruled, and to which said ruling defendant at the time duly excepted; and thereupon upon such findings the court now here, upon like division, does consider and give judgment that plaintiff do have and recover judgment of and from defendant in the said sum of one thousand two hundred eighty-two & $\frac{6}{100}$ dollars and costs of suit, taxed at $135.30, and to which judgment defendant at the time duly excepted, and now certificate of division of opinion of the judges of said court is signed and writ of error to the Supreme Court of the United States allowed and ordered, entered of record as follows:

In the circuit court of the United States of the eighth judicial circuit for the district of Kansas, at its November term, A. D. 1884, held at the city of Topeka, in said district, by Hon. D. J. Brewer, judge of said circuit court, and Hon. C. G. Foster, judge of said district.

In the matter of BALTUS VAN SLYKE, Plaintiff,
vs.
THE CITY OF WATERVILLE, MARSHALL COUNTY, KANSAS, Defendant. } Law. No. 4741.

Be it remembered that upon the the trial of this action upon issue joined upon petition of plaintiff, answer of defendant, and reply of plaintiff, the cause having been duly heard and taken under advisement by the court, was considered by said two judges, and thereupon the said two judges were divided in opinion upon questions of interest and importance arising upon the conclusions of fact found and stated by the court upon the said trial, viz:

1st. Had the defendant as such city power to issue such bonds for the said purpose in the original issue thereof, 1872, and did such want of power or such power appear upon the face thereof?

2nd. Did defendant issue the said bonds sued on?

3rd. If issued by defendant, had defendant power as such city to issue such bonds sued on for the said purpose therein expressed, and did such want of power, if not existing, appear upon the face of such bonds?

4th. If such bonds sued on were issued by defendant and
53-54 disposed of in open market for value, without other notice to purchasers than such as all persons were bound to take from the public character thereof, is the defendant estopped from denying its liability thereon to plaintiff?

5th. Upon the conclusions of fact so found and stated upon the trial of this action, is the plaintiff entitled to judgment for said amount stated?

The said circuit judge being of opinion that such questions should be determined in favor of the plaintiff, and judgment rendered in his favor for the said amount stated, and the said district judge differing therefrom, and judgment having been ordered in favor of plaintiff, and defendant having duly excepted thereto, it is now here ordered that the said questions as above stated, and upon which the said judges were divided in opinion as aforesaid, that same shall be forthwith stated under the direction of said judges, and certified and entered of record in said cause for writ of error to the Supreme Court of the United States, and which is now accordingly done in open court, at said term thereof, and writ of error from such judgment is now allowed to said defendant, and bond fixed therefor, to operate as supersedeas, in the sum of ($2,000.00) two thousand dollars. Done and certified this 3rd day of March, A. D. 1885, in open court.

DAVID J. BREWER,
Circuit Judge.

C. G. FOSTER,
District Judge.

55 In the circuit court of the United States of the eighth judicial circuit for the district of Kansas, at its November term, A. D. 1884, held at the city of Topeka, in said district, by Hon. D. J. Brewer, judge of said circuit, and Hon. C. G. Foster, judge of said district.

In the Matter of BALTUS VAN SLYKE, Plaintiff,
vs.
THE CITY OF WATERVILLE, MARSHALL COUNTY, KAN., Defendant.
} Law. No. 4741.

Be it remembered that upon the trial of this action upon issue joined upon petition of plaintiff, answer of defendant, and reply of plaintiff, the cause having been duly heard and taken under advisement by the court was considered by said two judges, and thereupon the said two judges were divided in opinion upon questions of interest and importance arising upon the conclusions of fact found and stated by the court upon the said trial, viz:

1st. Had the defendant as such city power to issue such bonds for the said purpose in the original issue thereof, 1872, and did such want of power or such power appear upon the face thereof?

2nd. Did defendant issue the said bonds sued on?

3rd. If issued by defendant had defendant power as such city to issue such bonds sued on for the said purpose therein expressed, and did such want of power if not existing appear upon the face of such bonds?

4. If such bonds sued on were issued by defendant and disposed of in open market for value, without other notice to purchasers than such as all persons were bound to take from the public character thereof, is the defendant estopped from denying its liability thereon to plaintiff?

56 5. Upon the conclusions of fact so found and stated upon the trial of this action is the plaintiff entitled to judgment for said amount stated, the said circuit judge being of opinion that such questions should be determined in favor of the plaintiff and judgment rendered in his favor for the said amount stated, and the said district judge differing therefrom:

And judgment having been ordered in favor of plaintiff, and defendant having duly excepted thereto:

It is now here ordered that the said questions as above stated, and upon which the said judges were divided in opinion as aforesaid that same shall be forthwith stated under the direction of said judges and certified and entered of record in said cause for writ of error to the Supreme Court of the United States, and which is now accordingly done in open court at said term thereof, and writ of error from such judgment is now allowed to said defendant and bond fixed therefor to operate as supersedeas in the sum of $2,000.00.

Done and certified this 3rd day of March, A. D. 1885, in open court.

DAVID J. BREWER, *Circuit* Court.
C. G. FOSTER, *District Judge.*

[Endorsed:] No. 4741. Baltus Van Slyke *vs.* The City of Waterville, Marshall County, Kansas. Certificate of division. Filed Mar. 3, 1885. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

57 *Motion for New Trial.*

In the Circuit Court of the United States for the District of Kansas.

BALTUS VAN SLYKE, Plaintiff,
vs.
THE CITY OF WATERVILLE, MARSHALL COUNTY, KANSAS, Defendant. } No. 4741 Law.

Now comes the said named defendant and here moves the court to set aside the several findings, decision, and judgment in this action, and to grant a new trial of this action, and for causes affecting materially the substantial rights of the defendant, viz:

1st. That each [of] the several findings, conclusions, decisions, and judgment is not sustained by sufficient evidence and is contrary to law.

2. Several errors of law occurring at the said trial of this said action and duly excepted to at the time by defendant.

3rd. Error in the assessment of the amount of the recovery, the same being in excess of the amount properly recoverable in any event in the sum of viz: $41.21 and this action being one upon contract.

W. W. GUTHRIE, *Def'ts Att'y.*

[Endorsed:] No. 4741. Baltus Van Slyke *vs.* The City of Waterville, Marshall County, Kansas. Motion for new trial. Filed Mar. 3, 1885. A. S. Thomas, clerk, by Frank J. Thomas, deputy. W. W. Guthrie, def't's att'ys.

58 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of and from the record of all the proceedings had in said court in the action of Baltus Van Slyke *vs.* The City of Waterville, Marshall County, Kansas.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 25 day of July, A. D. 1885.

[The seal of the Circuit Court of the United States, District of Kansas. 1862.]

A. S. THOMAS, *Clerk.*

59 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, be-

tween Baltus Van Slyke, plaintiff, *vs.* The City of Waterville, Marshall County, Kansas, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 8th day of July, A. D. 1885.

[The seal of the Circuit Court of the United States, District of Kansas. 1862.]

A. S. THOMAS.
Clerk of the Circuit Court of the United States for the District of Kansas.

60 Costs of transcript, $23.85; paid by W. W. Guthrie, defendant's attorney.

A. S. THOMAS, *Clerk.*
By FRANK J. THOMAS, *Deputy.*

[Endorsed:] No. 4741. The City of Waterville, plaintiff in error, *vs.* Baltus Van Slyke, defendant in error. Writ of error. Filed July 8, 1885. A. S. Thomas, clerk. W. W. Guthrie, for pl'ff in error.

61 UNITED STATES OF AMERICA, *ss:*

To Baltus Van Slyke, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein The City of Waterville, Marshall county, Kansas, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 10th day of August, A. D. 1885.

[The seal of the Circuit Court of the United States, District of Kansas. 1862.]

C. G. FOSTER,
U. S. Dist. Judge.

Service hereof accepted Sept. 1, 1885.

S. E. BROWN,
Att'y for Def't in Error.

62 [Endorsed:] The City of Waterville, pl'f- in er., *vs.* Baltus Van Slyke, def't in er. Citation on writ of error.

[Endorsed:] Sup. Court U. S., 1885. Oct. term. No. 955. The City of Waterville *et al.*, pl'ffs in error, *v.* Baldus Van Slyke. Citation. [Stamped:] Office Supreme Court U. S. Filed Sept. 28, 1885. James H. McKenney, clerk.

Endorsed on cover: Kansas C. C. U. S. No. 955. The City of Waterville, Marshall county, Kansas, plaintiff in error, *vs.* Baldus Van Slyke. Filed September 18, 1885.

—IN THE—

Supreme Court of the United States.

THE CITY OF WATERVILLE, KANSAS,

vs.

BALTUS VAN SLYKE.

No. 955, October Term, 1885.

ERROR TO THE CIRCUIT COURT, DISTRICT OF KANSAS.

BRIEF OF PLAINTIFF IN ERROR.

S. E. BROWN,
Attorney for Defendant in Error,
115 BROADWAY, N. Y.

W. W. GUTHRIE, and,
E. STILLINGS,
Attorneys for Plaintiff in Error,
ATCHISON, KANSAS.

FRANK HALL, PRINTER, ATCHISON, KANSAS.

SUPREME COURT OF THE UNITED STATES.

THE CITY OF WATERVILLE, KANSAS *Plaintiff in Error,* *vs.* BALTUS VAN SLYKE, *Defendant in Error.*	No. 955. October Term, 1885.

On Error to the Circuit Court for the District of Kansas.

W. W. GUTHRIE, and
E. STILLINGS,
Attorneys for Plaintiff in Error.

S. E. BROWN,
Attorney for Defendant in Error.

Brief of Plaintiff in Error.

On November 2, 1885, defendant in error filed motion to dismiss the writ of error on the ground that upon the certificate of division filed, this court had no jurisdiction in this case. Briefs were filed on this motion, but the consideration thereof was on November 9, postponed until the case should be for hearing on its merits.

Nothing further will be presented by plaintiff in error on such motion, except to suggest that upon the findings

of fact as made by the trial court, (pages 24 to 28), the question of the liability of the city thereon, is purely a question of law.

Such findings of fact are the case, and present in full the case as found and stated upon the trial. Upon such case should the city be held liable?

The real propositions involved are: 1st—Could the city be held liable to the original holder? And 2d—If not, should the plaintiff be protected as a bona fide holder?

These coupons were for interest on so-called funding bonds, (No. 1, page 24), expressing upon their face, that they were issued for the purpose of refunding outstanding *water-power improvement bonds* under authority of Act of 1879 (No. 3, page 25) and in accordance with city ordinance No 66.

No refunding ordinance was ever passed. Ordinance No. 66, (No. 4, page 25) was "for the prevention of persons climbing upon railroad cars." No vote was ever had.

Such water-power improvement bonds expressed upon their face (No. 6, page 26) that they were issued "for the purchase and improvement of a *water-power on the Little Blue river*, in pursuance of a resolution."

During all such time all city acts were required to be authorized by ordinance, and none thereof ever existed. (No. 7, page 27.)

During all such time said city had a territory of from eighty to one hundred and twenty acres, with a population not exceeding six hundred, and on a hill one mile and a quarter distant from the Little Blue river, and with no communication therewith. (No. 8, page 27.)

Such bonds were in fact issued and used in the purchase of a farm with a mill site thereon, and to improve such mill site to subsidize private manufactories, and never available for any other purpose, nor otherwise used. (No. 9, page 28.)

No power ever existed for the issue of such bonds,

(No. 5, page 25), unless authorized by ch. 268, Session Laws 1872, as copied into said finding.

The plaintiff admitted in his petition (page 2), the ownership of the bonds from which the coupons were cut, and that the coupons were erroneous; and his right to recover was for interest on his claimed bonds, attached as an exhibit on page 17.

Then plaintiff had notice of all that the Funding Bond could *impart;* and was bound to take notice of the physical geography of the county; and to the reference to the legislative authority under which the bonds were issued as expressed upon their face, and to take notice of all the requirements (and provisions) thereof.

McClure *vs.* Oxford, 94 U. S., 429–432.

Why not as much bound to take notice of the city ordinance upon the face of the bond referred to, as to the statute referred to? There was no ordinance, No. 66, for issuing bonds, as there was no March 1, 1872, Act in the Oxford case; and the reference in the bond so notified the purchaser.

The Act of March 10, 1879, also notified the purchaser (No. 3, page 25 of record) that only matured and maturing *indebtedness* was authorized to be refunded. Said Act did not authorize matured and maturing *bonds*, but only *actual indebtedness* to be refunded.

Then if the water-power improvement bonds could not have been enforced against the city, neither could the funding bonds when expressing upon their face "that they were issued for the purpose of refunding the water-power improvement bonds;" and as such bonds were not a *valid indebtedness* of the city, their refunding was not authorized; and if done, would not make them the *debt* of the city; and when containing upon their face notice of such fact, the holder could not be an *innocent purchaser*.

Clearly the city had no power to buy and improve a mill site, either without or within its territory, either to

use or donate for private manufacturing purposes. Such is not a purpose of municipal organization within its territory, and certainly not without.

Nor could a city of six hundred, or six hundred thousand, have authority to go outside of its territory into another jurisdiction without the authorized consent of such jurisdiction; and no authority therefor has existed in Kansas, and erect water-works for domestic use within. How could the city protect its property or its water supply, or prevent another city from incorporating at the Shroyer farm and appropriating its water-works? Nor could the city levy and collect taxes from the property thus created when so situated. But that such a thing should be claimed for a four hundred community on a hill one mile and a quarter from a river, with private property intervening, is an absurdity.

But can a water-power improvement be said to be a city water-works, or the one ever be mistaken for the other?

"Every man is chargeable with notice of that which the law (both legislative, and of common sense) requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence."

The funding bond expresses upon its face, that it was issued by the city of Waterville, Marshall county, state of Kansas, for the purpose of refunding its outstanding water-power improvement bond; and its outstanding water-power improvement bonds were "issued in pursuance of an order issued by the city of Waterville, Marshall county, Kansas, July 24, 1872, ordering an election to be held on the 26th day of August, 1872, to vote upon a proposition to issue bonds to the amount of ten thousand dollars, for the purchase and improvement of a water-power on the Little Blue river, and an election duly held in said city on the 26th day of August, 1872, in compliance with the law." Was not the purchaser of such bonds put upon inquiry within the rule given in McClure *vs.* Oxford?

Is not the physical geography of a county, like the seasons a matter of common knowledge; and that which after being put upon inquiry any person could ascertain by the exercise of reasonable diligence?

Does it alter the case that the old bonds were compromised at less than their face. If invalid in the first place, the city can neither be bound, or estopped by any act based thereon.

Loan Association *vs.* Topeka, 20 Wall, 655.

If this judgment had been recovered upon the coupons of the 1872 bonds, would not the case be within the principle of every point but the last decided in the last cited case? But in that case, the property thus created was within the city of Topeka, subject to its jurisdiction and taxation.

Hanson *vs.* Vernon, 27 Ia., 28–47.

Wells *vs* City, 22 Mo., 384.

The People *vs.* Salem, 20 Mich., 452.

Sharpless *vs.* Mayor, 21 Pa. St., 147–167.

Whiting *vs.* Railroad Co., 25 Wis., 167–186.

Cooley's Constitutional Lim. 213.

The city could not be bound otherwise than by ordinance.

Newman *vs.* City of Emporia, 32 Kas., 456.

We submit, therefore, that the five several questions stated by the trial court as upon which the judges thereof were divided in opinion, (page 34), were fully authorized upon the record; and that same should be

determined in favor of the plaintiff in error, and thereon that the cause should be remanded to the said circuit court with instruction to reverse its said judgment, and upon its said findings of fact to enter judgment for the said defendant.

W. W. GUTHRIE, and
E. STILLINGS,
Attorneys for Plaintiff in Error.

116-699

SUPREME COURT OF THE UNITED STATES.

THE CITY OF WATERVILLE, KANSAS,

Plaintiff in Error,

vs.

BALTUS VAN SLYKE,

Defendant in Error.

No. 955.
October Term,
1885.

Error to the Circuit Court for the District of Kansas.

W. W. GUTHRIE, and
E. STILLINGS,
Attorneys for Plaintiff in Error.

S. E. BROWN,
Attorney for Defendant in Error.

On motion of defendant in error, to dismiss for want of jurisdiction.

Brief of Plaintiff in Error.

Motion of defendant in error is filed upon authority of Weeth *vs.* New England Mortgage Security Co.,

106 U. S., 605, and cases therein referred to, but which is not in point.

In this decision the proposition involved was, "does the evidence support the findings of the master; and if so, was the master right in his conclusions of law;" and thus presenting mixed questions of law and fact, and requiring the determination of the facts first; while in the case at bar no question of fact exists.

This action was tried to the court, two justices sitting, upon issues arising upon refunding bonds, and as a test case. Upon the facts found, and as stated in eleven conclusions, the court by divided opinion, as a conclusion of law found the city liable, and rendered judgment accordingly. If there was nothing else in the case this would present the one question of law, viz: "Upon the undisputed facts, as a matter of law, is the city liable, or not liable?" The facts not being in dispute, there is no mixed question of tact and law. But this question is divided into different propositions or subordinate questions, viz: "Was the city liable on the original bonds of 1872; and if not, will the city be liable on the refunding bonds of 1880 when giving notice upon their face of want of consideration therefor; and if the refunding bonds were issued without consideration, and with notice upon their face, is the city estopped?"

In what other way could there be a divided opinion in this class of cases? The propositions are of law only, viz:

1. As the bonds of 1880 sued on, show upon their face that they are refunding bonds of the issue of 1872, then if the issue of 1872 was unauthorized there could be no consideration for the issue of 1880, and no recovery thereon unless the city had estopped itself; and hence, the first question of division is the fundamental question in the case.

2. When issued upon the street by the mayor and clerk without the authority of the council, was that the act of the city?

3. Had the city the power to issue for waterpower improvement outside of its territory, and does the want of power appear upon the face of the bonds?

4. Does the infirmity claimed, appear upon the face of the bonds sued on?

5. Upon the unquestioned facts, is the city liable?

There is no "medley of questions of law and fact" in this last proposition, neither the amount as claimed, nor any fact upon which the court ordered judgment is in question; but the question is one as a matter of law only upon the liability of the city in the given case.

Insurance Co. *vs.* Boon, 95 U. S., 117. See 140.

England *vs.* Gerhardt, U. S. Supreme Court, MSS., Dec. 8, 1884.

How does this question present the whole case *de novo* on the law and the facts, as in the 106 U. S., 605, case, wherein the reviewing court had first to pass upon the sufficiency of the evidence to support the master's findings, and until done, there was no question of law.

It is to be hoped that the desire of each litigant and of the trial court, that the case at bar shall be a test case, and the question of the liability of this city settled without further litigation, shall be satisfied at the earliest possible day.

W. W. GUTHRIE, and
E. STILLINGS,
Attorneys for Plaintiff in Error.

116-699

FILED.
JAN 15 1886
JAMES H. McKENNEY.
CLERK.

—IN THE—

Supreme Court of the United States.

THE CITY OF WATERVILLE, KANSAS,
Plaintiff in Error,

vs.

BALTUS VAN SLYKE,
Defendant in Error.

No. 955, October Term, 1885.

ERROR TO THE CIRCUIT COURT, DISTRICT OF KANSAS.

BRIEF OF DEFENDANT IN ERROR.

S. E BROWN,
Attorney for Defendant in Error,
115 BROADWAY, N. Y.

HON. W. W. GUTHRIE, and
HON E. STILLINGS,
Attorneys for Plaintiff in Error,
ATCHISON, KANSAS.

BAKER STATIONERY AND PRINTING CO., 30 BARCLAY ST., N. Y.

—IN THE—

Supreme Court of the United States.

THE CITY OF WATERVILLE, KANSAS,
Plaintiff in Error,

vs.

BALTUS VAN SLYKE,
Defendant in Error.

No. 955, October Term, 1885.

ERROR TO THE CIRCUIT COURT, DISTRICT OF KANSAS.

BRIEF OF DEFENDANT IN ERROR.

S. E BROWN,
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Attorneys for Plaintiff in Error,
ATCHISON, KANSAS.

SUPREME COURT OF THE UNITED STATES

THE CITY OF WATERVILLE, KANSAS,

Plaintiff in Error,

vs.

BALTUS VAN SLYKE,

Defendant in Error.

Error to the Circuit Court of the District of Kansas.

The defendant in error insists on the motion to dismiss and for the reasons why such was made, he refers to the printed brief on file, in support of the motion. But at the same time he says to the Court, that he would like a decision on the merits; as he holds bonds and coupons of the same defendant. I suppose I need only to refer to N. E. M. S. Co., vs. Wooth cited in my brief on motion to dismiss in this case, in which I desired a full decision on the merits. I don't think it is essential to say much in defence.

I.—I maintain that the bonds of 1872 were valid. The river ran close to the town and they located the dam so as to get the best power to pump, etc., see Fairmount Works at Philadelphia. The city had the power to issue the bonds and exercised it: See L. L. Kansas 1872, c. 268. It is not to be presumed that the Council exceeded its power.

II.—The validity of the original bonds is a matter as to which the defendant in error is entirely indifferent for the reason that the bonds he holds are funding bonds though he has a right to rely upon the decision of this

court as to the force and effect of the certificate of the Auditor of the State of Kansas. See Transcript p. 31.

Lewis *vs.* Barbour Co., 105 U. S., 782.

The Auditor certified the original bonds to have been regularly issued, etc., etc. See record pp. 31 and 32.

The bonds in suit so recited that the defendant is concluded from all of its pretended defences.

The funding bonds in so many words say (see p. 29), *we are indebted* for value received and we propose to fund, and we have made an ordinance, No. 66, published in the *Blue Valley Telegraph*, Dec. 12, A. D. 1879, to effect this object (see p. 29). The ordinance in question the writer found in the paper, but counsel don't seem to have had the fairness to insert the same in the finding. However the question is freed from difficulty by the decision of this Court, Hackett *vs.* Ottawana, 99 U. S., 86, the effect of which is that an ordinance cited or title, or title alone, estops the city.

The funding act required no ordinance, anyway, but defendant says it did pass the ordinance.

A broad view of the case is simply this: the defendants had made its bonds for a purpose which we claim was proper and lawful; it couldn't or wouldn't pay, and it made its new bonds in conformity to the law of Kansas, and said to the world, we have *settled our debt at* sixty per cent. and issue our funding bonds.

The estoppel is complete, both as to the debt and as to the procedure.

It is a strange thing for these people to deny and defend when I am appealed to by many corporations in Kansas to stay and so refund.

What encouragement to refund if we are fought again on funding bonds?

The defendant in error asks for a dismissal of the writ of error, and in default thereof for an affirmance of the judgment below.

S. E. BROWN,
Attorney for Defendant in Error.